IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6345 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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BHAVANAGAR MUNICIPAL CORP. - Appellant(s)
Versus
CHAUDHARI JESANGBHAI AVCHALBHA & 2 - Defendant(s)

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Appearance :
MR JR NANAVATI for Appellant(s) : 1,
MR TULSHI R SAVANI for Defendant(s) : 1,
MR MP PRAJAPATI for Defendant(s) : 1.2.1,1.2.2
SERVED BY AFFIX.(N) for Defendant(s) : 2,
SINGHI & CO for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main), Bhavnagar passed in M.A.C.P. No.239 of 1989 dated 6th July, 1995 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on the day of incident when present opponent No.1 was proceeding on a scooter driven by her husband-Bhagvanbhai, the said scooter was dashed

by a vehicle driven by present opponent No.2. On account of the said accident, opponent No.1 received serious bodily injuries, and hence, she filed a petition claiming an amount of Rs.69,500/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of opponent No.1 before the Tribunal that on account of rash and negligent driving on the part of opponent No.2 accident in question took place. The appellant and opponent No.3 have tried to controvert the story put forward by the opponent No.1. They have stated that the accident in question took place on account of sole negligence on the part of the driver of the scooter. However, the Tribunal did not believe the story put forward by them. On perusal of documents placed on record it transpires that the place of incident is densely populated and the width of the road at that place

is about 30' feet. Therefore, it was incumbent on the opponent No.2 to drive the vehicle in question carefully so as not to endanger human life on the road. It may be noted that the opponent No.2 did not appear before the Tribunal to controvert the story put forward by the appellant, and hence, the Tribunal was justified in coming to the conclusion that the accident in question took place on account of the sole negligence on the part of the opponent No.2. The Tribunal, therefore, was justified in coming to the conclusion that opponent No.1 is entitled for compensation.

3.1 While considering the aspect of compensation, the Tribunal has taken into consideration the medical and other evidence available on record. Looking to the nature of injuries and disability sustained by the opponent No.1 and the fact that she was earning Rs.650/- per month, the compensation awarded by the Tribunal, in my opinion, is just and reasonable.

3.2 As regards the aspect of rate of interest, the Tribunal has awarded interest at the rate of 15 per cent. The said rate of interest is on higher side, in view of the fact that at the relevant time, it was the practice of the Courts/Tribunals to grant interest at the rate of six per cent only. The appellant, therefore, shall be entitled for the amount of compensation with interest at the rate of six per cent only, and not at the rate of fifteen per cent.

4.0 In the result, the appeal is partly allowed. The appellant shall be entitled for amount of compensation with interest at the rate of six per cent only, from the date of application before the Tribunal. The judgment and award of the Motor Accident Claims Tribunal(Main), Bhavnagar passed in M.A.C.P. No.239 of 1989 dated 6th July, 1995 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K. S. Jhaveri, J.)

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